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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 THOMAS WEINSTEIN,

10 Plaintiff,

11 v.

12 MANDARICH LAW GROUP, LLP,

13 Defendant.
14

Case No. C17-1897RSM

ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

15 This matter comes before the Court on the parties' Motions for Summary Judgment.
16 Dkts. #25 and #31. For the reasons stated below, the Court GRANTS Plaintiff Thomas
17 Weinstein's Motion for Partial Summary Judgment and DENIES Defendant Mandarin Law
18 Group, LLP ("Mandarich")'s Motion.
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20 **I. BACKGROUND**

21 In September of 2014, Plaintiff Thomas Weinstein was served with a lawsuit from
22 Mandarin Law Group to collect an unpaid debt of \$3,028.05 owed to a debt-buyer named
23 CACH LLC. Dkt. #25-2 (Declaration of Mr. Weinstein) ¶ 2-3; Dkt. #6 (Answer) at ¶ 5. Mr.
24 Weinstein was unable to pay the amount he was being sued for, or pay for an attorney, so he
25 decided to call Mandarin directly to see if he could settle the case with an agreement to make
26 regular payments from his debit card. Dkt. #25-2 at ¶ 3-4.
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ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT
AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1

1 In this phone call they discussed settling the case, agreed to an amount, gave all of the
2 necessary payment information over the phone including the expiration date for his debit card,
3 and believed that the matter had been resolved. *Id.* at ¶ 5 and ¶ 9.

4 His belief was validated by an October 6, 2014, letter from Mandarich. *Id.* at Ex. A.
5 This letter says “this is an attempt to collect a debt” and “[t]hank you for setting up an
6 automated payment plan on the above referenced account.” *Id.* The letter lists an upfront
7 payment of \$302.81 and 28 monthly payments of \$97.33. *Id.* Mr. Weinstein then received a
8 second letter from Mandarich, dated October 8, 2014. *Id.* at Ex. B. This letter mentions a
9 “pending lawsuit” and states “[w]e have proposed the following settlement terms as set forth in
10 the enclosed Stipulation for Judgement or Dismissal. To Accept these terms, you must provide
11 our office with the following two items: 1. The signed Stipulation for Judgement or Dismissal
12 on or before 10/18/2014; and 2. Your payments as agreed upon and set forth in the Stipulation.”
13 *Id.* For added clarity, the letter goes on in bold and all-caps: “PLEASE BE ADVISED THAT
14 YOUR SUBMISSION OF PAYMENT WITHOUT RETURNING THE SIGNED
15 STIPULATION DOES NOT RESULT IN AN AGREEMENT BETWEEN YOU AND CACH,
16 LLC. FURTHER, CACH, LLC WILL DEPOSIT SAID PAYMENT, AND APPLY FUNDS
17 TOWARDS THE OUTSTANDING BALANCE OWED ON THE ABOVE-REFERENCED
18 ACCOUNT. SUBMISSION OF BOTH THE SIGNED STIPULATION AND PAYMENT PER
19 THE TERMS IS REQUIRED TO CONSTITUTE AN AGREEMENT BETWEEN YOURSELF
20 AND CACH, LLC.” *Id.* (emphasis in original). The letter ends by stating “[i]f we do not
21 receive both items within the timeframe stated above, we will proceed with the litigation against
22 you.” *Id.* Attached to this letter was a Stipulation for Judgement or Dismissal that listed the
23 total debt of \$3,028.05 and payments of \$97.33 consistent with the prior letter. *Id.*
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1 Mr. Weinstein was apparently confused by this letter. He believed that it was sent in
2 error, given his prior phone conversation and the fact that Mandarich had been charging his
3 debit card. *Id.* at ¶ 11. He apparently did not sign the Stipulation for Judgement or Dismissal or
4 otherwise respond to the letter.

5 Mandarich sent regular letters acknowledging the \$97.33 charges to the debit card. *Id.*
6 at Ex. C. Mandarich did not otherwise communicate with Mr. Weinstein.

7
8 On October 5, 2015, Mandarich actually filed the Complaint previously served to Mr.
9 Weinstein a year earlier. Dkt. #27-1 at 4. The Complaint had previously been served in
10 September of 2014, and no new service was provided to Mr. Weinstein indicating that the
11 Complaint had actually been filed.

12
13 Mandarich moved for a Default Judgment against Mr. Weinstein in the underlying
14 lawsuit, and an Order was granted on October 13, 2015. Dkt. #25-1 at 7. This judgment totaled
15 \$3,558.05 with post-judgment interest at 12% per annum. *Id.* Mandarich moved for the full
16 amount originally owed, plus fees, ignoring the fact that Mr. Weinstein had made regular
17 payments for over a year. Mandarich admits that it failed to credit Mr. Weinstein for the
18 amounts paid. Dkt. #27-1 at 3. Mandarich also admits that it failed to provide Mr. Weinstein
19 with a copy of the motion for default judgment as required by court rules. *Id.*

20
21 Mandarich's ability to process the \$97.33 payments suddenly ended in March of 2016
22 when the debit card expired. Dkt. #27-1 at 4.

23
24 Mr. Weinstein's attorney sent Mandarich's counsel an email on March 10, 2016,
25 requesting they "send any stipulation you would like my client to sign to my office so that the
26 lawsuit does not proceed and payments continue until paid in full." Dkt. #27-1 at 16. This
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1 email attached a Civil Case Schedule in the underlying case, indicating that Mr. Weinstein knew
2 that a lawsuit had been filed against him, but no mention is made of the Default Judgment.

3 Mandarich garnished Mr. Weinstein's wages in April 2017. This was the first notice
4 Mr. Weinstein received that a default judgment had been entered against him.

5 This lawsuit was filed in King County Superior Court on November 21, 2017, and later
6 removed to this Court. Dkt. #1-3. Mr. Weinstein brings claims against Mandarich under the
7 Fair Debt Collection Practices Act ("FDCPA") and the Washington Collection Agency Act
8 ("WCAA").
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10 At issue in Mr. Weinstein's Partial Motion for Summary Judgment are (1) Mandarich's
11 failure to provide notice to Mr. Weinstein of the (improper) motion for default judgment, and
12 (2) Mandarich's acquisition of a default judgment for the full amount of the complaint, plus
13 additional fees, with no credits for Mr. Weinstein's numerous payments. Dkt. #25 at 5. Mr.
14 Weinstein does not move for the Court to determine damages at this time.
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16 II. DISCUSSION

17 A. Legal Standard for Summary Judgment

18 Summary judgment is appropriate where "the movant shows that there is no genuine
19 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.
20 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are
21 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at
22 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of
23 the matter, but "only determine[s] whether there is a genuine issue for trial." *Crane v. Conoco,*
24 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O'Melveny &*
25 *Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).
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1 On a motion for summary judgment, the court views the evidence and draws inferences
2 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*
3 *Dep't of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable
4 inferences in favor of the non-moving party. See *O'Melveny & Meyers*, 969 F.2d at 747, *rev'd*
5 *on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a "sufficient
6 showing on an essential element of her case with respect to which she has the burden of proof"
7 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

9 **B. Analysis**

10 The Fair Debt Collection Practices Act was enacted to protect consumers from improper
11 or abusive debt collection efforts. 15 U.S.C. § 1692. The FDCPA is a strict-liability statute
12 which "makes debt collectors liable for violations that are not knowing or intentional." *Reichert*
13 *v. Nat'l Credit Sys., Inc.*, 531 F.3d 1002, 1005 (9th Cir. 2008); see also *McCollough v. Johnson,*
14 *Rodenburg & Lauinger, LLC*, 637 F.3d 939, 948 (9th Cir. 2011). "A single violation of any
15 provision of the Act is sufficient to establish civil liability under the FDCPA." *Taylor v. Perrin,*
16 *Landry, deLaunay & Durand*, 103 F.3d 1232, 1238 (5th Cir. 1997). The FDCPA is a remedial
17 statute construed liberally in favor of the consumer. *Tourgeman v. Collins Fin. Servs, Inc.*, 755
18 F.3d 1109, 1118 (9th Cir. 2014); *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d
19 1162, 1176 (9th Cir. 2006) ("we wish to reinforce that the broad remedial purpose of the
20 FDCPA is concerned primarily with the likely effect of various collection practices on the
21 minds of unsophisticated debtors."). Section 1692e of the FDCPA prohibits the use by a debt
22 collector of "any false, deceptive, or misleading representation or means in connection with the
23 collection of any debt." *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir. 2010).

1 Section 1692e(2) prohibits “[t]he false representation of ... the character, amount, or legal status
2 of any debt.” *Id.*

3 Mandarich admits that it is a “debt collector” under 15 U.S.C. §1692a(6) and a
4 “collection agency” under RCW 19.16.100(4), and that Mr. Weinstein is a debtor as defined by
5 RCW 19.16.100(7). There is no meaningful dispute that Mr. Weinstein was pursued on a debt
6 as defined in the FDCPA.
7

8 Defendant Mandarich admits that it failed to credit Mr. Weinstein for the amounts paid
9 toward his debt. Dkt. #27-1 at 3. Mandarich also admits that it failed to provide Mr. Weinstein
10 with a copy of the motion for default judgment as required by court rules. *Id.* The natural
11 consequence of these failures was that Mandarich used false, deceptive or misleading
12 representations to a court in connection with the collection of and characterization of the
13 amount of this debt. This alone establishes liability under § 1692e of the FDCPA. Mr.
14 Weinstein has identified several other portions of the statute that are violated by these actions.
15 *See* Dkt. #25 at 11–12. Mandarich’s efforts to provide notice to Mr. Weinstein that he needed
16 to sign and return a stipulation, and its repeated phone calls to his counsel, do not change the
17 fact that these violations happened, and that they were significant.
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20 The one-year statute of limitations does not prohibit Mr. Weinstein’s FDCPA claim,
21 because he filed this action within one year of his wages being garnished, and because this
22 action was the first time that Mr. Weinstein knew or had reason to know of the violations at
23 issue here. *See Mangum v. Action Collection Servs., Inc.*, 575 F.3d 935, 939-41 (9th Cir. 2009)
24 (discussing discovery rule and equitable tolling). From the record, Mr. Weinstein had no way
25 of knowing that Mandarich had sought a default judgment against him for the incorrect amount
26 until his wages were garnished and the hidden actions became revealed. The March 2016 email
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1 from Mr. Weinstein's attorney does not mention the default judgment. Res judicata does not
2 apply either, because the claims here are different than the claims that could have been brought
3 in the prior state court action. In any event, the res judicata affirmative defense was not raised
4 in Mandarich's Answer and cannot be raised for the first time in a response brief. *See* Fed. R.
5 Civ. P. 12; Dkt. #6; Dkt. #10.

6
7 The bona fide error defense is unavailable to Mandarich. Under 15 U.S.C. § 1692k(c), a
8 defendant asserting "bona fide error" bears the burden of establishing that (1) it violated the
9 FDCPA unintentionally; (2) the violation resulted from a bona fide error; and (3) it maintained
10 procedures reasonably adapted to avoid the violation. *McCollough*, 637 F.3d at 948 (citation
11 omitted). As to the third element: "If the bona fide error defense is to have any meaning in the
12 context of a strict liability statute, then a showing of 'procedures reasonably adapted to avoid
13 any such error' must require more than a mere assertion to that effect. The procedures
14 themselves must be explained, along with the manner in which they were adapted to avoid the
15 error." *Reichert*, 531 F.3d at 1007 (citation omitted). The Court has reviewed the briefing of the
16 parties and the declaration of Mr. Vos and concludes that there is no evidence for a reasonable
17 juror to conclude that Mandarich maintained any kind of procedure adapted to avoid the
18 violations in question, other than its stated intention not to violate laws and court rules.

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21 Mandarich's actions also violate the WCAA. RCW 19.16.250(21) prohibits the
22 collection, or attempted collection, of any amounts not authorized by law. As Mr. Weinstein
23 did not owe \$3,558.05 at the time of the motion for default judgment, all actions taken in
24 furtherance of the improper Default Judgment are violations of RCW 19.16.250(21).
25 Mandarich was not exempt from the WCAA as it was acting as a debt collector for its client's
26 debts.
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Mandarich also moves for summary judgment dismissal of Mr. Weinstein's claims. Dkt. #31. Mandarich again argues that the FDCPA claims are barred by the statute of limitations and res judicata, that Mr. Weinstein had notice of the lawsuit, that the error in calculating the amount owed was not a violation of the FDCPA, and that the bona fide error defense applies. *Id.* The Court has already addressed these issues above. Mandarich argues that Mr. Weinstein cannot establish damages, other than emotional distress. However, emotional distress damages are available in this case. The Court finds that, considering the facts in the light most favorable to the nonmoving party, there is a genuine issue of material fact as to Mr. Weinstein's damages. This Motion is properly denied.

III. CONCLUSION

Having reviewed the relevant briefing and the remainder of the record, the Court hereby finds and ORDERS:

- 1) Plaintiff Weinstein's Motion for Partial Summary Judgment, Dkt. #25, is GRANTED. Defendant is liable under the FDCPA and WPAA as stated above. The amount of damages remains an issue for trial.
- 2) Defendant Mandarich's Motion for Summary Judgment, Dkt. #31, is DENIED.

DATED this 28 day of November, 2018.

W. J. S.

RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE